

No. 13-19-00379-CV

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IN THE THIRTEENTH COURT OF APPEALS  
FILED IN  
13th COURT OF APPEALS  
CORPUS CHRISTI/EDINBURG, TEXAS

8/25/2020 12:59:56 PM

KATHY S. MILLS  
Clerk

VALSTAY, LLC,

*Appellant,*

vs.

TEXAS WINDSTORM INSURANCE ASSOCIATION,

*Appellee.*

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Appeal from the 28th District Court of  
Nueces County, Texas, Cause No. 2017DCV-4203-A

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## **APPELLEE'S BRIEF**

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
INDEX OF AUTHORITIES.....	iv
STATEMENT OF THE CASE.....	vi
STATEMENT REGARDING ORAL ARGUMENT .....	vii
STATEMENT OF FACTS .....	1
SUMMARY OF ARGUMENT .....	5
ARGUMENT .....	7
I. QUESTION 1 WAS NOT REVERSIBLE ERROR. ....	7
A. The jury question was properly phrased. ....	7
B. The question did not improperly incorporate a limitations defense.....	9
C. The instructions accompanying Question 1 were appropriate.....	10
1. The dates in the instructions were based on Valstay’s own pleadings and evidence. ....	10
2. Instructing the jury that TWIA was required to conduct a reasonable investigation was not reversible error.....	13
3. The instructions did not comment on the weight of the evidence. ....	16
II. QUESTIONS 3 AND 4 WERE APPROPRIATELY CONDITIONED ON LIABILITY.....	18
PRAYER.....	20
CERTIFICATE OF COMPLIANCE WITH WORD LIMIT .....	21
CERTIFICATE OF SERVICE .....	21

## APPENDIX

1. Plaintiff's Original Petition and Request for Disclosure (CR 7)
2. Plaintiff's Amended Petition (CR 80)
3. Halliwell Report (DX 72)
4. Notice of Potential Life Safety Concern (DX 73)

## INDEX OF AUTHORITIES

### Cases

<i>Brannan Paving GP, LLC v. Pavement Markings, Inc.</i> , 446 S.W.3d 14 (Tex. App.—Corpus Christi 2013, pet. denied) .....	10, 13
<i>de Laurentis v. United Servs. Auto. Ass’n</i> , 162 S.W.3d 714 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) .....	15
<i>Employers Cas. Co. v. Block</i> , 744 S.W.2d 940 (Tex. 1988) .....	14
<i>Gilbert Tex. Const., L.P. v. Underwriters at Lloyd’s London</i> , 327 S.W.3d 118 (Tex. 2010) .....	14
<i>Harris County v. Smith</i> , 96 S.W.3d 230 (Tex. 2002) .....	10
<i>Ins. Network of Texas v. Kloesel</i> , 266 S.W.3d 456 (Tex. App.—Corpus Christi 2008, pet. denied) .....	17
<i>Krishnan v. Ramirez</i> , 42 S.W.3d 205 (Tex. App.—Corpus Christi 2001, pet. denied) .....	8
<i>Maddox v. Denka Chem. Corp.</i> , 930 S.W.2d 668 (Tex. App.—Houston [1st Dist.] 1996, no writ) .....	8
<i>Robinson &amp; Harrison Poultry Co. v. Galvan</i> , 323 S.W.3d 236 (Tex. App.—Corpus Christi 2010, vacated w.r.m.) .....	8
<i>Sheldon L. Pollack Corp. v. Falcon Indus., Inc.</i> , 794 S.W.2d 380 (Tex. App.—Corpus Christi 1990, writ denied).....	8
<i>Spencer v. Eagle Star Ins. Co. of Am.</i> , 876 S.W.2d 154 (Tex. 1994). .....	20
<i>Tex. Windstorm Ins. Ass’n v. Dickinson ISD</i> , 561 S.W.3d 263 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) .....	15

<i>Thota v. Young</i> , 366 S.W.3d 678 (Tex. 2012) .....	7, 16
<i>UMLIC VP LLC v. T &amp; M Sales &amp; Envtl. Sys., Inc.</i> , 176 S.W.3d 595 (Tex. App.—Corpus Christi 2005, pet. denied) .....	17
<i>USAA Tex. Lloyds Co. v. Menchaca</i> , 545 S.W.3d 479 (Tex. 2018) .....	19

## **Statutes and Rules**

TEX. INS. CODE § 2210.001 .....	15
TEX. INS. CODE § 2210.573(a) .....	1, 11
TEX. INS. CODE § 2210.576(a) .....	7
TEX. INS. CODE § 2210.576(b) .....	19
TEX. INS. CODE § 2210.576(c) .....	19
TEX. INS. CODE § 2210.576(d) .....	18, 19
TEX. R. CIV. P. 277 .....	17
TEX. R. CIV. P. 278 .....	9, 10

## STATEMENT OF THE CASE

- Nature of the Case:* Valstay, LLC sued Texas Windstorm Insurance Association (“TWIA”) for denying its claim for alleged windstorm and hail damage to the roof of a motel property in Corpus Christi. App. 1 & 2.
- Trial Court:* 28th District Court of Nueces County (Hon. Nanette Hasette).
- Disposition:* The case was tried to a jury in April 2019, and the jury found in favor of TWIA. Valstay Br., Tab 2. The trial court signed a final take-nothing judgment. *Id.*, Tab 1.

## **STATEMENT REGARDING ORAL ARGUMENT**

Appellee does not believe that oral argument is necessary because the issues raised in this appeal are uncomplicated and involve the application of settled or straightforward rules of law.

## STATEMENT OF FACTS

Plaintiff Valstay, LLC (“Valstay”) owns a motel in Corpus Christi, Texas called the Valstay Inns & Suites. CR 81. On July 8, 2015, Valstay filed a windstorm claim with Texas Windstorm Insurance Association (“TWIA”)—the hail and windstorm insurer of last resort in Texas—claiming the roof sustained wind damage on May 24, 2015, and that water was leaking through the ceiling in different areas of the motel. PX 22; PX 23.

The policy covered only “direct physical loss to the covered property caused by windstorm or hail” during the policy period from August 31, 2014 through August 31, 2015. DX 1, Commercial Policy, Page 3, Covered Causes of Loss. The policy expressly excluded damage caused by floodwater or rain, including most wind-driven rain. *See id.*, Exclusions 1 & 6. And, as a condition of the policy, claims had to be filed “not later than one year after the date on which the damage to property that is the basis of the claim occurs.” *Id.*, Page 5, Condition 4.a(1); *see* TEX. INS. CODE § 2210.573(a) (same).

After receiving Valstay’s claim, TWIA immediately assigned Eberl Claims Service (“Eberl”) to investigate. PX 25. Eberl spoke to Valstay’s representative, Stacey Hoffman, that day about the claim. *Id.* at 2. Hoffman reported to Eberl that Valstay’s roofer informed them of wind damage to the roofing material, and that there was interior water damage in several parts of the motel. *Id.*



Eberl scheduled an inspection of the roof with Halliwell Engineering Associates (“Halliwell”). PX 26, at 3. Halliwell inspected the roof and interior of the motel on June 15, 2015, accompanied by Eberl and multiple contractors for Valstay. *Id.* Halliwell found that the roof was in very bad condition and had deteriorated to the point of being physically unsafe. *Id.*; PX 23, at 11; App. 3, at 4-6 (DX 72); App. 4 (DX 73). The roof was “spongy” under foot, indicating that moisture was trapped in the substrate under the roofing. App. 3, at 4-6. There were large areas of water-ponding residue, indicating that the water collects in those areas when it rains instead of draining. *Id.* There were large roof patches that were in bad condition, and the roof was strewn with debris, such as abandoned equipment and discarded buckets, brushes, and patching material. *Id.* Notably, however, there was no evidence of any storm-created openings or of damaging hail. *Id.*

A few weeks later, on July 28, 2015, C. Parker Construction (“Parker”), a building consultant, inspected the property to estimate the cost of repairs. PX 28, at 4; *see* PX 35 & 36 (Parker estimates). Parker reported that the Valstay property was “the worst condition building he has ever seen.” PX 23, at 8. It was so bad, in fact, that Parker reported “[t]here is a life safety issue with this building.” *Id.* The roof was in such a deteriorated condition that it was “beyond repair.” *Id.* at 10.

On September 11, 2015, TWIA called Valstay to discuss the Halliwell report, which found that the damage to the property was due to long-term wear, tear, and deterioration that predates the reported date of loss (May 24, 2015), and that weather records did not show a significant weather event on that date. PX 23, at 11; *see* App. 3 (Halliwell report). TWIA followed up a few days later with a Notice of Claim Denial, attaching a copy of the Halliwell report. PX 38. The notice explained that, based on Halliwell's findings, the damage they found predated the reported date of loss and was due to non-covered causes, such as deferred maintenance. PX 38, at 1-2. TWIA's notice, however, encouraged Valstay to provide any additional information it may have to show that the claim was covered, including any photos, invoices, or reports showing the damage. *Id.* at 2.

On September 16, 2015, TWIA notified Valstay that it was canceling the policy (which had recently renewed) and returning the premium, effective October 1, 2015, because the property did not meet TWIA's underwriting guidelines and was "uninsurable." DX 2, at 3; RR3:31. The next day, TWIA provided Valstay with a copy of a Notice of Potential Life Safety Concerns that Halliwell had observed. PX 23, at 14; App. 4 (DX 73). Halliwell's notice explained that because of deferred maintenance and resulting water intrusion over an extended period of time, the entire roofing system of the property had deteriorated to the point that it could collapse and cause injuries and property damage. App. 4, at 1-2 (DX 73).

Valstay did not question TWIA’s coverage decision at the time or provide any further information to show that its property sustained covered damage. RR3:36-39, 127-30. But, on September 14, 2017—almost exactly two years after TWIA denied the claim—Valstay sent TWIA a notice of intent to sue based on TWIA’s coverage decision two years earlier. DX 69. The very next day, Valstay filed this lawsuit, alleging that “on or about May 24, 2015, a hail and windstorm caused substantial damage to Valstay’s property;”<sup>1</sup> that Valstay filed a claim for this damage with TWIA, but TWIA denied coverage; and asserted causes of action against TWIA for breach of contract and violation of Chapter 2210 of the Texas Insurance Code and sought \$961,420 in damages, plus costs, interest, and attorney’s fees. App. 1 (CR 7-12).

The case was tried to a jury in April 2019, and the jury returned a verdict in favor of TWIA, finding TWIA had not breached the policy. Valstay Br., Tab 2 (CR 731). The trial court therefore signed a take-nothing final judgment. *Id.*, Tab 1 (CR 751). Valstay appeals the take-nothing judgment. CR 829.

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<sup>1</sup> In an amended petition, Valstay slightly revised this allegation to state that “on April 14 and May 23, 2015, hail and windstorms caused substantial damage to the roof of Valstay’s property.” App. 2, at 3 (CR 82).

## **SUMMARY OF ARGUMENT**

Valstay's appeal focuses entirely on the jury charge and has no merit. Valstay argues that the form of Question 1 (the principal liability question), asking whether TWIA failed to comply with the policy, was erroneous because it did not mirror language of the TWIA Statute (which focuses on whether TWIA's denial of coverage was "proper"). But the form of Question 1 was the same form proposed by Valstay. The question was not erroneous, and even if it was, Valstay waived the error by requesting the question itself and failing to submit it in the proper form.

Valstay further argues that the instructions accompanying Question 1 were erroneous because they focused on particular dates of loss, but the record shows that they closely tracked Valstay's own pleadings and evidence, which focused on those specific dates. Valstay's own expert, in fact, testified that the dates reflected in the court's instructions were the only dates when the damage could have occurred, and there was no evidence it occurred on any other dates that were not clearly barred by limitations. The trial court clearly did not err by submitting instructions that conformed to the pleadings and evidence.

Valstay also argues that the instructions to Question 1 improperly required it to prove that its claims were not barred by limitations, and that TWIA should have known of the damage to Valstay's property. But the instructions did neither: they simply instructed the jury that TWIA breached the policy if it failed to pay the

claims that Valstay asserted. And there was no evidence or argument at trial suggesting that TWIA did not know about or could not have discovered the alleged damage by conducting a reasonable investigation. TWIA's argument, rather, was that the damage predated the claimed date of loss and was not covered by the policy. Valstay fails to show that the instructions were erroneous, or that they probably caused the rendition of an improper judgment.

Finally, Valstay argues that the trial court erred by conditioning Questions 3 and 4 (predicate questions for awarding statutory double damages for intentional claim mishandling) on a "Yes" answer to Question 1. Valstay asserts that Questions 3 and 4 are independent of whether TWIA breached the policy, so they should not have been conditioned on a finding of liability for breach. But Valstay fails to recognize that if the jury answered "No" to Question 1 (as they did), then there were no damages to double. Even if the jury had answered Questions 3 and 4 in Valstay's favor, the answers would have been immaterial. Therefore, the court's charge was not erroneous, and the judgment should be affirmed.

## ARGUMENT

### I. QUESTION 1 WAS NOT REVERSIBLE ERROR.

#### A. The jury question was properly phrased.

Valstay argues that Question 1—the principal liability question presented to the jury—improperly asked the jury whether TWIA “fail[ed] to comply” with the policy instead of whether TWIA’s denial of Valstay’s claim was “proper.” Valstay Br. at 42-45; *see* TEX. INS. CODE § 2210.576(a) (stating that the “only issues a claimant may raise” in an action against TWIA are “whether the association’s denial of the claim was proper” and “the amount of damages”). Valstay fails to explain how a *failure to comply* with the policy and an *improper denial* of coverage are meaningfully different, or how that wording probably resulted in an improper judgment. Therefore, it has failed to show reversible error. *See Thota v. Young*, 366 S.W.3d 678, 687 (Tex. 2012) (charge error is not reversible unless it was “harmful” because it “probably caused the rendition of an improper judgment”).

Valstay also fails to mention that the wording it complains about was its own. Three times in the trial court, Valstay submitted proposed jury questions that included the wording it now claims is erroneous. *See* CR 142, 707 & 718 (Valstay’s proposed charge, phrasing the question: “Did *Texas Windstorm Insurance Association* fail to comply with its insurance policies?”) (underline

added). The trial court “accepted” Valstay’s proposed Question 1—specifically, its “fail to comply” language—but with modifications to the instructions that followed. Valstay Br., Tab 5 (CR 707). Valstay never suggested that its own wording was wrong until the formal charge conference, just before the charge was read to the jury, when Valstay suddenly complained that the language it had requested—and the trial court accepted—was “improper” because it did not precisely mirror the statute. RR5:11.

As noted above, Valstay cannot show it was legally erroneous for the court to ask the jury whether TWIA failed to comply with the policy instead of whether TWIA improperly denied coverage of Valstay’s claim. *See Krishnan v. Ramirez*, 42 S.W.3d 205, 220 (Tex. App.—Corpus Christi 2001, pet. denied) (“A judgment should not be reversed because of a failure to submit other and various phases or different shades of the same question.”) (quoting *Sheldon L. Pollack Corp. v. Falcon Indus., Inc.*, 794 S.W.2d 380, 383 (Tex. App.—Corpus Christi 1990, writ denied)). But even if the question could be considered erroneous, Valstay waived the error by inviting it and by failing to tender the question in the proper form. *See Robinson & Harrison Poultry Co. v. Galvan*, 323 S.W.3d 236, 248 (Tex. App.—Corpus Christi 2010, vacated w.r.m.) (a party “may not invite error by requesting that an issue be included in the charge and then objecting to its submission”); *Maddox v. Denka Chem. Corp.*, 930 S.W.2d 668, 670–71 (Tex. App.—Houston

[1st Dist.] 1996, no writ) (“A party cannot complain when the judge submits an issue substantially similar to the one it requested.”); TEX. R. CIV. P. 278 (“Failure to submit a question shall not be deemed a grounds for reversal of the judgment, unless its submission, in substantially correct wording, has been requested in writing and tendered by the party complaining of the judgment”). Therefore, Valstay’s point of error has no merit and should be overruled.

**B. The question did not improperly incorporate a limitations defense.**

Valstay argues that the instructions to Question 1 were reversible error because they improperly incorporated a statute of limitations defense on which TWIA had the burden of proof. Valstay Br. at 59-70.<sup>2</sup> Valstay reasons that its burden of proof was merely to show coverage, not timely reporting, and that the court’s instructions to the jury required Valstay to prove that it filed its claim within one year. *See id.* Valstay argues that this shifted the burden of proof on TWIA’s affirmative defense from TWIA to Valstay. *Id.* at 59-60.

Valstay’s argument is baseless. Nothing in Question 1 required Valstay to prove that it filed its claim within the one-year limitations period. The court simply instructed the jury on the claims Valstay pleaded and presented to the jury at

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<sup>2</sup> Valstay also seems to argue that Question 1 included a “knowledge requirement” affirmative defense. *See* Valstay Br. at 68-70. It is unclear what affirmative defense this is supposed to be, and it appears that Valstay’s real complaint is that the instructions incorporated elements of a “bad faith” claim. This argument is addressed in Section I.C.2, *infra*.



trial—that its property sustained wind damage on May 24, 2015 and hail damage on April 13, 2015. CR 734.<sup>3</sup>

Texas law requires the charge to conform to the pleadings and evidence. *See* TEX. R. CIV. P. 278 (“The court shall submit the questions, instructions and definitions . . . which are raised by the written pleadings and the evidence.”); *Brannan Paving GP, LLC v. Pavement Markings, Inc.*, 446 S.W.3d 14, 20 (Tex. App.—Corpus Christi 2013, pet. denied) (holding that “the trial court is bound to submit only ‘those questions, instructions, and definitions raised by the pleadings and the evidence.’”) (quoting *Harris County v. Smith*, 96 S.W.3d 230, 236 (Tex. 2002)). Submitting instructions that conformed to Valstay’s pleadings and the evidence was not error and did not require Valstay to disprove an affirmative defense.

**C. The instructions accompanying Question 1 were appropriate.**

***1. The dates in the instructions were based on Valstay’s own pleadings and evidence.***

Similar to its argument that Question 1 improperly incorporated a statute of limitations defense, Valstay argues that the instructions to Question 1 improperly

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<sup>3</sup> *See* CR 82 (amended petition alleging that “on April 14 and May 23, 2015, hail and windstorm caused substantial damage to the roof of Valstay’s property”); RR2:30-31 (Valstay opening statement arguing that the property was damaged in a windstorm on May 24, 2015 and in a hail storm that could only have occurred in April 2015); PX 39 at 2 (report of Valstay’s expert, Gary Treider, concluding that the “wind damage occurred on May 24, 2015 and hail damage occurred on April 13, 2015”); RR2:104, 105 (Treider testimony that the hail damage occurred on April 13, 2015 and wind damage occurred on May 24, 2015); RR2:117-19 (Treider testimony that based on his review of weather records, the only possible dates that the hail damage could have occurred were on May 12, 2012 and April 13, 2015); RR2:127-28, 137 (Treider testimony that the wind damage to Valstay’s roof occurred on May 24, 2015).

limited its claim to two specific dates and no others. Valstay Br. at 52-57. But, as Valstay admits, the specific dates were based on Valstay's own pleadings and evidence. *See id.* at 46 (admitting that the court's instructions "tracked the specific 'claim' lodged by Valstay"), 71 (admitting that its theory at trial was that "the damage occurred on those two storm dates"). Valstay claims it did not "wed itself" to those dates, *id.* at 71, but that is an attempt to rewrite the record.

One of Valstay's key concerns in this case—which it openly admitted to the jury in its opening statement—was that it had to have reported the alleged wind and hail damage to its property within one year. RR2:23; *see* TEX. INS. CODE § 2210.573(a) (stating that "an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs"). Valstay filed its insurance claim on July 8, 2015, so the damage had to have occurred no earlier than July 8, 2014. *See* PX 22.

From the beginning, Valstay claimed its property sustained wind damage on a specific date: May 24, 2015—within the one-year period. *See* PX 22 (initial claim acknowledgement showing a date of loss of May 24, 2015). Valstay's original petition alleged that "on or about May 24, 2015, a hail and windstorm caused substantial damage to Valstay's property." App. 1, at 2 (CR 8). In its amended petition—its live pleading at trial—Valstay similarly alleged that "on April 14 and May 23, 2015, hail and windstorms caused substantial damage to the

roof of Valstay’s property.” App. 2, at 3 (CR 82).<sup>4</sup> Likewise, in opening statements at trial, Valstay’s counsel argued that the alleged wind damage occurred during a storm on May 24, 2015, and that hail damage occurred the month before, in April 2015. RR2:30.

Valstay’s property damage expert, Gary Treider, produced an expert report (admitted at trial as PX 39) concluding that the “wind damage occurred on May 24, 2015, and hail damage occurred on April 13, 2015.” PX 39, at 2. Treider likewise testified that he researched the weather history in the area going back to 2012 and that there was “only one storm” that could have caused the wind damage and that was on May 24, 2015. RR2:105, 128, 137. He further testified that, based on the same weather data, there were “only two dates” the hail damage could possibly have occurred: either May 10, 2012 (well outside the limitations period) or April 13, 2015. RR2:117-19.

Consistent with Valstay’s pleadings and evidence, the trial court instructed the jury to consider “windstorm damage, if any, that resulted from the alleged event occurring on May 24, 2015,” and “hail damage, if any, that resulted from the alleged event occurring on April 13, 2015.” CR 734. As shown above, these instructions closely tracked Valstay’s claim and the evidence it presented at trial.

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<sup>4</sup> It is unclear why the specific dates Valstay pleaded in its Amended Petition are one day before the dates it claimed and that its expert testified at trial were the only dates when the damage could have occurred. It is presumably a typographical error.

Contrary to Valstay's suggestions, there were no other dates for the jury to consider or possibly to have found because there was no evidence that the damage occurred at any other time within the one-year filing period. TWIA presented no such evidence, and Valstay's expert clearly testified that the only possible dates of damage were in 2012 (outside the one-year period), or on the specific dates with which the jury was instructed. RR2:105, 117-19, 128, 137. Therefore, the trial court did not abuse its discretion by instructing the jury to consider those dates. *See Brannan Paving*, 446 S.W.3d at 20 (court must submit only those questions and instructions raised by the pleadings and evidence).

***2. Instructing the jury that TWIA was required to conduct a reasonable investigation was not reversible error.***

Valstay argues that the instructions to Question 1, instructing the jury that TWIA failed to comply with the policy if it did not pay for all windstorm and hail damage that it "either (1) knew about, or (2) should have known about after a reasonable investigation," were reversible error, and require a new trial, because they improperly required Valstay to prove that TWIA acted in bad faith. Valstay Br. at 50-52. Valstay emphasizes that its burden of proof was merely to show that TWIA's denial of coverage was improper and argues that it had no burden to show that TWIA knew or should have known of the damage, or that TWIA failed to conduct a reasonable investigation. *Id.*

Valstay's argument fails to show reversible error. According to Valstay itself in this appeal, TWIA was liable for improper denial of the claim if it failed to pay for any covered damage that it knew about or should have known about by conducting a reasonable investigation. Valstay Br. at 47. The trial court's instructions simply incorporated this concept and were not erroneous. *See Krishnan*, 42 S.W.3d at 220 ("A judgment should not be reversed because of a failure to submit other and various phases or different shades of the same question.").

Valstay nevertheless contends that the instructions imposed an unfair and erroneous burden of proof. Valstay Br. at 50-52, 60, 68-70. But that is unsupported. The instruction did not require Valstay to prove that TWIA actually knew about covered damage or conducted an unreasonable investigation—it only required proof that the covered damage was discoverable through investigation, and there was no issue in this case that the alleged wind or hail damage at issue was not discovered or could not have been discovered. The issue was what caused the damage and when—matters on which Valstay clearly had the burden of proof. *See Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 124 (Tex. 2010) (insured has the burden of proof to establish coverage); *Employers Cas. Co. v. Block*, 744 S.W.2d 940, 944 (Tex. 1988) (insured has the burden of proof to show its damage occurred during the policy period), *disapproved on other*

*grounds, State Farm Fire & Cas. Co. v. Gandy*, 925 S.W.2d 696 (Tex. 1996); *Tex. Windstorm Ins. Ass’n v. Dickinson ISD*, 561 S.W.3d 263, 273 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (insured has the burden of proof to show its damage is covered by the policy).<sup>5</sup>

The implication of Valstay’s argument is untenable. Valstay suggests that TWIA is liable for “improperly” denying coverage even if the damage was both (a) unknown, and (b) undiscoverable; as if TWIA had a legal obligation not only to investigate and pay for covered claims, but to search out and find anything in existence that could possibly be covered, regardless of whether it was the subject of any claim or reasonably discoverable. That is not the law. *See id.* Indeed, if were the law, Valstay would have no burden of proof at all: it would only need to file a claim, and the burden would then shift to TWIA to prove Valstay’s case for it, or to conclusively disprove the existence of any covered damage. The cost of complying with such a duty would completely defeat the purpose of TWIA’s existence, which is to make affordable windstorm and hail coverage available to Texans when it would otherwise be unavailable. *See* TEX. INS. CODE § 2210.001. No authority supports this proposition, and even Valstay does not seem to agree

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<sup>5</sup> Notably, the policy at issue is a named-perils policy, which means that “all perils not specifically included in the policy are excluded from coverage.” *Dickinson ISD*, 561 S.W.3d at 273-74 (quoting *de Laurentis v. United Servs. Auto. Ass’n*, 162 S.W.3d 714, 722 (Tex. App.—Houston [14th Dist.] 2005, pet. denied)). The perils covered by the policy here are “direct physical loss to the covered property caused by windstorm or hail” during the policy period. *See* DX 1, Commercial Policy, Page 3, Covered Causes of Loss.

with it. *See id.* at 47 (arguing that TWIA was liable for covered damage that it knew about or should have known about by conducting a reasonable investigation).

Furthermore, even if the trial court should not have instructed the jury that TWIA was liable if it failed to pay for damage that “it either (1) knew about, or (2) should have known about after a reasonable investigation,” the error, if any, was harmless. *See Thota*, 366 S.W.3d at 687 (charge error is not reversible unless it was “harmful” because it “probably caused the rendition of an improper judgment”). As noted above, there was no issue about whether TWIA failed to discover the damage at issue, and TWIA never argued that it could not have discovered it by investigating—it argued that the damage was the result of poor maintenance over a long period of time and that it predated the alleged date of loss. *See* RR5:48-60, 67-68. Valstay can point to nothing suggesting that these instructions reasonably could have made any difference to the jury’s assessment of the case, or probably caused an improper judgment. Therefore, Valstay has not shown reversible error. *Thota*, 366 S.W.3d at 687.

**3. *The instructions did not comment on the weight of the evidence.***

Valstay argues that the trial court improperly commented on the weight of the evidence by instructing the jury that TWIA failed to comply with the policy if it failed to pay for all windstorm or hail damage sustained on the dates Valstay claimed it occurred. Valstay Br. at 70-72. Valstay theorizes that by focusing the

jury on those specific dates, the trial court “validated” a defensive theory that TWIA was not liable unless the damage occurred on those dates. *Id.* at 72.

The Texas Rules of Civil Procedure generally prohibit the court from commenting directly on the weight of the evidence in the charge. TEX. R. CIV. P. 277. “In order to be a direct comment on the weight of the evidence, the issue must suggest to the jury the trial court’s opinion on the matter submitted.” *UMLIC VP LLC v. T & M Sales & Envtl. Sys., Inc.*, 176 S.W.3d 595, 608 (Tex. App.—Corpus Christi 2005, pet. denied). “Impermissible comments would include those where the court assumes the truth of a material controverted fact, or exaggerates, minimizes, or withdraws some pertinent evidence from the jury’s consideration.” *Ins. Network of Texas v. Kloesel*, 266 S.W.3d 456, 482 (Tex. App.—Corpus Christi 2008, pet. denied).

Valstay argues that by focusing the jury on specific dates, the court deemphasized or disregarded evidence that covered damage to its property could have occurred on other dates within the one-year reporting period. Valstay Br. at 70-72. But there was no probative evidence that Valstay’s property sustained covered property damage on other dates within that time period. In fact, Valstay’s own expert testified that the damage could *only* have occurred on April 13, 2015 and May 24, 2015—the two specific dates the jury was instructed on. RR2:105, 117-19, 128, 137.



Valstay implies there was evidence that covered property damage occurred on other dates within the one-year reporting period, but it fails to direct this Court to any such evidence. It merely cites bulk weather data provided by its expert, Gary Treider, who testified that the weather data proved that the only dates the property could have sustained the claimed damage were those the jury was instructed about. *See* Valstay Br. at 71 (citing PX 13 & PX 39); *see also* RR2:105, 117-19, 128, 137 (Treider testimony).

Instructing the jury on Valstay's pleaded and argued claim, consistent with Valstay's evidence, was not improperly commenting on the weight of the evidence. Valstay's argument has no merit.

## **II. QUESTIONS 3 AND 4 WERE APPROPRIATELY CONDITIONED ON LIABILITY.**

Questions 3 and 4 asked the jury whether TWIA intentionally mishandled Valstay's claim as a predicate to potentially awarding statutory double damages. CR 736-39; *see* TEX. INS. CODE § 2210.576(d) (authorizing additional damages for intentional mishandling shown by clear and convincing evidence). The questions were conditioned upon a "Yes" answer to Question 1 because they are only relevant to potentially double the amount of actual damages awarded for mishandling the claim. *See id.*

Valstay's own proposed Questions 3 and 4 were conditioned on a "Yes" answer to Question 1. *See* CR 145-48, 720-23 (Valstay's proposed jury charge).

But now, Valstay argues that the trial court erred in so conditioning those questions because “bad faith” is a separate and distinct cause of action that does not depend upon coverage or an improper denial of the claim. Valstay Br. at 73-74.

Conceptually, Valstay’s argument is wrong. The Texas Supreme Court has held that, while a claim for breach of common-law duties is distinct from a claim for breach of contract, if an insured only seeks policy benefits as damages in a case against its insurer (as Valstay did here), it cannot recover damages for bad faith unless the insurer breached the policy and owed policy benefits. *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489-90 (Tex. 2018).

More importantly, Valstay’s argument fails to comprehend the nature of this claim under the TWIA Statute. Under the statute, if TWIA improperly denied coverage, it may be liable for the amount of the covered loss, plus interest and any consequential damages the insured may have suffered. TEX. INS. CODE § 2210.576(b)-(c). Under the “bad faith” provision of the statute, if TWIA is shown, by clear and convincing evidence, to have intentionally mishandled the claim, the claimant may also recover damages “in an amount not to exceed the aggregated amount of the covered loss . . . and the consequential damages”. *Id.* § 2210.576(d).

If the jury’s answer to Question 1 was “No,” as it was here, then there is no “covered loss” or consequential damages and, therefore, no damages to potentially double for intentional mishandling of the claim. Indeed, the jury here did not even

answer Question 2 (damages) because it found in Question 1 that TWIA was not liable. Valstay Br., Tab 2 (CR 735). So even if Questions 3 and 4 had not been conditioned an affirmative answer to Question 1, and the jury had somehow found in Valstay's favor on Questions 3 and 4, the answers would have been immaterial because no amount of additional damages could have been awarded under the statute. *Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154, 157 (Tex. 1994). The issue was rendered moot, or immaterial, by the jury's "No" answer to Question 1, and Valstay's complaint on appeal has no merit.

### **PRAYER**

TWIA requests that this Court affirm the trial court's judgment, assess all costs against Valstay, and grant TWIA all further relief to which it is entitled.

Respectfully submitted,

/s/ J. Stephen Barrick

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**ATTORNEYS FOR APPELLEE  
TEXAS WINDSTORM INSURANCE  
ASSOCIATION**

**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

This brief complies with the type-volume limitation of Tex. R. App. P. 9.4(i)(2) because it contains 4,963 words, excluding the parts of the brief that are excepted by Tex. R. App. P. 9.4(i)(1).

/s/ J. Stephen Barrick

**CERTIFICATE OF SERVICE**

I certify that on August 25, 2020, a copy of this document was served upon the following counsel of record via electronic service:

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/s/ J. Stephen Barrick

## **APPENDIX**

1. Plaintiff's Original Petition and Request for Disclosure (CR 7)
2. Plaintiff's Amended Petition (CR 80)
3. Halliwell Report (DX 72)
4. Notice of Potential Life Safety Concern (DX 73)

**App. 1**

**Plaintiff's Original Petition (CR 7)**

2017DCV-4203-A  
CAUSE NO. \_\_\_\_\_

VALSTAY, LLC	§	IN THE DISTRICT COURT
	§	
Plaintiff	§	
	§	
v.	§	
	§	_____ JUDICIAL DISTRICT
TEXAS WINDSTORM INSURANCE ASSOCIATION	§	
	§	
Defendant	§	NUECES COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Valstay, LLC, files this original petition complaining of Defendant, Texas Windstorm Insurance Association, in which Plaintiff is seeking over \$1,000,000. In support of this petition, Valstay, LLC would show this honorable court as follows:

**I. Parties, Venue and Discovery Level**

Plaintiff Valstay, LLC (hereafter "Valstay") is a Texas Limited Liability Company operating a hotel located in Corpus Christi, Nueces County, Texas.

Defendant, Texas Windstorm Insurance Association (hereafter "TWIA"), is a domestic insurance company that can be served by serving its President, at 5700 South Mopac Expressway, Building A, Austin, Texas 78749-1459.

The venue of this case is proper in Nueces County, Texas under Sections 15.002 and 15.032 of the Texas Civil Practices and Remedies Code.

Plaintiff intends to conduct discovery in this case under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

**II. Agency and Respondeat Superior**

Whenever in this petition it is alleged that the Defendant did any act or thing, it is meant that Defendant or its agents, officers, servants, employees, or representatives did such act or thing. They

were also done with the full authorization or ratification of Defendant or done in the normal routine, course and scope of the agency or employment of Defendant or its agents, officers, servants, employees, or representatives.

### **III. Conditions Precedent**

All conditions precedent to recovery have occurred or been performed. The giving of sixty days written statutory notice for this claim has been rendered impracticable by reason of the necessity of filing suit in order to prevent the potential expiration of a statute of limitations applicable to this claim.

### **IV. Facts of the Case**

Valstary owns and operates a hotel, The Valstay Inn & Suites, located at 6255 IH 37, Corpus Christi, Texas 78409. Valstay purchased an insurance policy from TWIA (policy no. 55267608) to cover its property against damage from wind and hail from August 31, 2014 to August 31, 2015.

During the subject policy period, on or about May 24, 2015, a hail and windstorm caused substantial damage to Valstay's property. Valstay had purchased such insurance from TWIA for multiple years. In late 2012, TWIA had threatened to cancel Valstay's policy unless Valstay could show that the roof was in proper working condition. Thereafter, Valstay made repairs to the roof and in a March 21, 2013 report, engineer, Ronald A. Voss of Voss Engineering, Inc. certified on behalf of TWIA that the roof had been repaired and was in proper operating condition.

After the storm, Valstay reported its loss to TWIA and TWIA assigned it claim number C0202851. TWIA then hired an independent adjuster, Howard Wible of Eberl Claim Services (hereafter "Wible"), to investigate the loss and adjust the claim. TWIA and Wible retained Halliwell Engineering Associates, Inc. (hereafter "Halliwell") to investigate the damages to the property. Valstay believes that TWIA hires these adjusters and engineers because TWIA knows that these



adjusters and engineers are biased for insurance companies and will give the insurer favorable, result oriented reports on which they can low-ball or deny an insured's claim.

On or about July 15, 2015, Wible and Todd Cormier, P.E. of Halliwell on behalf of TWIA inspected the windstorm damage to Valstay's property. True to form, In an August 19, 2015 report, Halliwell concluded that the damage at the Valstay property was not caused by the hail and windstorm, but was caused by deterioration and normal wear and tear, which are excluded by the terms of the TWIA policy. As an experienced adjuster, Wible knew or should have known the obvious damage was a result of the wind and hailstorm. Further, had Wible or Halliwell bothered to review Valstay's history and file with TWIA, they would have discovered Voss's report from March 21, 2013, indicating that Valstay's roof had been repaired and was performing properly.

On September 15, 2015, TWIA denied Valstay's claim based on the engineering report issued by Halliwell which found that the damage to Valstay was caused by long-term deterioration or improper maintenance of the roofing systems. If TWIA had conducted a proper investigation, it would have discovered the Voss report which clearly stated that the roof had been repaired and working properly as of March 21, 2013 ruling out long-term deterioration or improper maintenance. On October 1, 2015, TWIA cancelled its policy with Valstay claiming that damage it found during the July 15, 2015 inspection rendered the property as uninsurable.

Since Valstay believed that TWIA and its adjusters conducted an inadequate and biased investigation of the hail and windstorm damage to its property and improperly denied their claim, Valstay hired Vertex Roofing (hereafter "Vertex") to inspect the damage and estimate the cost to properly repair the Valstay property. In a report dated July 13, 2016, Vertex estimated the cost to repair the damage to the Valstay property from the subject hail and windstorm was \$961,420.00.

On or about August 26, 2017, Hurricane Harvey inflicted damage to the Corpus Christi area, causing significant damage to Valstay. Due to TWIA's improper denial of Valstay's hail and

windstorm claim, Valstay could not afford to repair its property and could not obtain insurance to cover the damage sustained by Hurricane Harvey.

#### **V. Cause of Action for Breach of Contract**

According to the insurance policy that Plaintiff purchased, TWIA has the duty to investigate and pay Plaintiff policy benefits for claims made for damages to its property caused by the hail and windstorm. As a result of this damage, which is covered under Plaintiff's insurance policy with TWIA, Plaintiff's property has suffered extensive damage. TWIA has breached this contractual obligation and the subject insurance policy by failing to pay Plaintiff policy benefits for the cost to properly repair the hail and windstorm damage to its property. TWIA has also breached the contractual provisions on timely investigating, adjusting and paying Plaintiff's hail and windstorm claim. As a result of these breaches of contract, Plaintiff has suffered the damages that are described in this petition.

#### **VI. Causes of Action for Violation of Chapter 2210 of The Texas Insurance Code**

TWIA's acts, omissions, and failures that are described in this petition violate Chapter 2210 of the Texas Insurance Code. Specifically, TWIA: A) denied Valstay's claim without conducting a reasonable investigation and B) denied coverage for Valstay's claim after liability had become reasonably clear. As a result of these violations of chapter 2210, Valstay has suffered the damages that are described in this petition.

#### **VII. Waiver and Estoppel**

TWIA has waived and is estopped from asserting any defenses, conditions, exclusions, or exceptions to coverage not contained in any reservation of rights or denial letters to Plaintiff.

#### **VIII. Damages**

The above described acts, omissions, failures and conduct of TWIA have caused Plaintiff damages which include, without limitation, the cost to properly repair the property of \$961,420.00.

Plaintiff has also incurred consequential damages for the cost to repair the damage caused by Hurricane Harvey. All the damages described in this petition are within the jurisdictional limits of the Court.

#### **IX. Additional Damages**

As described in this petition, TWIA has intentionally violated section 2210 of the Texas Insurance Code, as those terms are defined in the applicable statutes. Because of TWIA's intentional misconduct, Plaintiff is entitled to additional damages as authorized by Section 2210.576 of the Texas Insurance Code.

#### **X. Attorneys' Fees**

As a result of TWIA's conduct that is described in this petition, Plaintiff has been forced to retain the undersigned attorneys to prosecute this action and has agreed to pay reasonable attorneys' fees. Plaintiff is entitled to recover these attorneys' fees under Section 2210.576 of the Texas Insurance Code.

#### **XI. Rule 194 Requests for Disclosure**

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, TWIA is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a) through (l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests a trial by jury and also requests that Defendant be cited to appear and answer, and on final hearing, the court award Plaintiff a judgment against Defendant for the following:

1. Actual, consequential, and additional damages in an amount within the jurisdictional limits of the court;
2. Reasonable attorneys' fees through trial and on appeal;
3. Pre-judgment and post-judgment interest as provided by law;
4. Costs of court; and

5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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By: /s/ Todd Lipscomb  
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Attorneys for Plaintiff

**App. 2**

**Plaintiff's Amended Petition (CR 80)**

CAUSE NO. 2017DCV-4203-A

VALSTAY, LLC	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
	§	
VS.	§	28 <sup>TH</sup> JUDICIAL DISTRICT
	§	
TEXAS WINDSTORM INSURANCE	§	
ASSOCIATION	§	
<i>Defendant,</i>	§	NUECES COUNTY, TEXAS

**PLAINTIFF'S AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Valstay, LLC, files this amended petition complaining of Defendant, Texas Windstorm Insurance Association, in which Plaintiff is seeking over \$1,000,000. In support of this petition, Valstay, LLC would show this honorable court as follows:

**I. Parties, Venue and Discovery Level**

Plaintiff Valstay, LLC (hereafter "Valstay") is a Texas Limited Liability Company operating a hotel located in Corpus Christi, Nueces County, Texas.

Defendant, Texas Windstorm Insurance Association (hereafter "TWIA"), is a domestic insurance company that has already answered and appeared in this case.

The venue of this case is proper in Nueces County, Texas under Sections 15.002 and 15.032 of the Texas Civil Practices and Remedies Code.

Plaintiff intends to conduct discovery in this case under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

**II. Agency and Respondeat Superior**

Whenever in this petition it is alleged that the Defendant did any act or thing, it

is meant that Defendant or its agents, officers, servants, employees, or representatives did such act or thing. They were also done with the full authorization or ratification of Defendant or done in the normal routine, course and scope of the agency or employment of Defendant or its agents, officers, servants, employees, or representatives.

### **III. Conditions Precedent**

All conditions precedent to recovery have occurred or been performed. The giving of sixty days written statutory notice for this claim has been rendered impracticable by reason of the necessity of filing suit in order to prevent the potential expiration of a statute of limitations applicable to this claim.

### **IV. Facts of the Case**

Valstay owns and operated a hotel, The Valstay Inn & Suites, located at 6255 IH 37, Corpus Christi, Texas 78409. Valstay purchased an insurance policy from TWIA (policy no. 55267608) to cover its property against damage from wind and hail from August 31, 2014 to August 31, 2015. Valstay had continually purchased windstorm insurance from TWIA for multiple years, from at least 2007- 2016.

In late 2012, TWIA had threatened to cancel Valstay's policy unless Valstay could show that the roof was in proper working condition. Thereafter, Valstay made repairs to the roof and in a March 21, 2013 report, engineer, Ronald A. Voss of Voss Engineering, Inc. certified on behalf of TWIA that the roof had been repaired and was in proper operating condition. The policy was then re-instated.

Only two years after the repairs, on April 14 and May 23, 2015, hail and windstorms caused substantial damage to the roof of Valstay's property. After the April and May 2015 storms, Valstay reported its loss to TWIA and TWIA assigned it claim number C0202851. TWIA then hired an independent adjuster, Howard Wible of Eberl Claim Services (hereafter "Wible"), to investigate the loss and adjust the claim. TWIA and Wible retained Halliwell Engineering Associates, Inc. (hereafter "Halliwell") to investigate the damages to the property.

On or about July 15, 2015, Wible and Mark Henry of Halliwell on behalf of TWIA inspected the windstorm damage to Valstay's property. In an August 19, 2015 "Invest-Engineering" report, Halliwell concluded that the damage at the Valstay property was not caused by the hail and windstorm, but was caused by deterioration and normal wear and tear, which are excluded by the terms of the TWIA policy.

As an experienced adjuster, Wible knew or should have known the obvious damage was a result of the wind and hailstorm. Further, had Wible or Halliwell bothered to review Valstay's history and file with TWIA, they would have discovered Voss's report from March 21, 2013, indicating that Valstay's roof had recently been repaired and was performing properly ruling out long-term deterioration or improper maintenance.

On September 15, 2015, TWIA denied Valstay's claim based on the engineering report issued by Halliwell. Notably, the Halliwell report was signed and sealed by a professional engineer, Todd Cormier, P.E. who was licensed in Texas, but had never visited the property. Mark Henry, who actually inspected the property was an architect,



not an engineer. According to Haliwell, there was storm damage at the property, but Haliwell concluded the damage occurred before December 2014. If Haliwell is correct, the damage would still have occurred during TWIA's insurance coverage of the property, making TWIA liable for the damage.

If TWIA had conducted a proper investigation, it would have discovered that when comparing the Haliwell report and the Voss report, the storm damage to the roof had to have occurred between March 21, 2013 and the date of Haliwell's inspection, at a time when TWIA insured the property, making TWIA's liability for the storm damage clear. It would have also discovered that the property was in satisfactory condition according to its own agent, Voss as of March 21, 2013 ruling out long-term deterioration or improper maintenance. Instead, on October 1, 2015, TWIA cancelled its policy with Valstay claiming that damage it found during the July 15, 2015 inspection rendered the property as uninsurable.

Since Valstay believed that TWIA and its adjusters improperly denied their claim, Valstay hired Vertex Roofing (hereafter "Vertex") to inspect the damage and estimate the cost to properly repair the Valstay property. In a report dated July 13, 2016, Vertex estimated the cost to repair the damage to the Valstay property roof from the subject hail and windstorm was \$961,420.00.

On or about August 26, 2017, Hurricane Harvey inflicted damage to the Corpus Christi area, causing significant damage to Valstay. Due to TWIA's improper denial of Valstay's hail and windstorm claim, Valstay could not afford to repair its property and could not obtain insurance to cover the damage sustained by Hurricane Harvey.

## **V. Cause of Action for Breach of Contract**

According to the insurance policy that Plaintiff purchased, TWIA has the duty to investigate and pay Plaintiff policy benefits for claims made for damages to its property caused by the hail and windstorm. As a result of this damage, which is covered under Plaintiff's insurance policy with TWIA, Plaintiff's property has suffered extensive damage. TWIA has breached this contractual obligation and the subject insurance policy by failing to pay Plaintiff policy benefits for the cost to properly repair the hail and windstorm damage to its property. TWIA has also breached the contractual provisions on timely investigating, adjusting and paying Plaintiff's hail and windstorm claim. As a result of these breaches of contract, Plaintiff has suffered the damages that are described in this petition.

## **VI. Causes of Action for Violation of Chapter 2210 of The Texas Insurance Code**

TWIA's acts, omissions, and failures that are described in this petition violate Chapter 2210 of the Texas Insurance Code. Specifically, TWIA: A) denied Valstay's claim without conducting a reasonable investigation and B) denied coverage for Valstay's claim after liability had become reasonably clear. Specifically, TWIA failed to review and reconcile the Haliwell and Voss reports, which showed that the storm damage to the roof occurred within TWIA's coverage of the property. As a result of these violations of chapter 2210, Valstay has suffered the damages that are described in this petition.

## **VII. Waiver and Estoppel**

TWIA has waived and is estopped from asserting any defenses, conditions,

exclusions, or exceptions to coverage not contained in any reservation of rights or denial letters to Plaintiff.

### **VIII. Damages**

The above described acts, omissions, failures and conduct of TWIA have caused Plaintiff damages which include, without limitation, the cost to properly repair the property of \$961,420.00. All the damages described in this petition are within the jurisdictional limits of the Court.

### **IX. Additional Damages**

As described in this petition, TWIA has intentionally violated section 2210 of the Texas Insurance Code, as those terms are defined in the applicable statutes. Because of TWIA's intentional misconduct, Plaintiff is entitled to additional damages as authorized by Section 2210.576 of the Texas Insurance Code.

### **X. Attorneys' Fees**

As a result of TWIA's conduct that is described in this petition, Plaintiff has been forced to retain the undersigned attorneys to prosecute this action and has agreed to pay reasonable attorneys' fees. Plaintiff is entitled to recover these attorneys' fees under Section 2210.576 of the Texas Insurance Code.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests a trial by jury and also requests that Defendant be cited to appear and answer, and on final hearing, the court award Plaintiff a judgment against Defendant for the following:

1. Actual, consequential, and additional damages in an amount within the jurisdictional limits of the court;

2. Reasonable attorneys' fees through trial and on appeal;
3. Pre-judgment and post-judgment interest as provided by law;
4. Costs of court; and
5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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Attorneys for Plaintiff

#### **CERTIFICATE OF SERVICE**

I hereby certify that Plaintiff has served a true and correct copy of the foregoing document on March 14, 2019 to the following counsel of record via the Court's ECF filing system:

David P. Salyer  
802 Rosenberg  
P.O. Box 629  
Galveston, Texas 77553  
Phone (409) 763-2481  
Fax (409) 762-1155

/s/ Todd Lipscomb  
Todd Lipscomb

## **App. 3**

### **Halliwell Report (DX 72)**

# HALLIWELL

## Engineering Associates

Texas Registration #F-10754

19 August, 2015

Gary Sims  
Claims Examiner  
Texas Windstorm Insurance Association  
PO Box 99090  
Austin, TX 78709-9090

Claim Number:	C0202851
<b>DOCUMENT TYPE:</b>	<b>INVEST-ENGINEERING REPORT</b>
Date of Loss:	05/24/2015
Insurance Company:	Texas Windstorm Insurance Association
Policy Number:	55267608
Insured:	Valstay Inn & Suites
Location of Loss:	6255 IH-37, Corpus Christi, TX 78409
Field Adjuster:	Howard Wilbe, Eberl Claims Service
Field File No.:	

Dear Mr. Sims:

### I. Introduction

At your request, Halliwell Engineering Associates, Inc. (HEA) performed an investigation of the reported damage at the above Location of Loss (LOL) or, Subject Property, resulting from the weather event on the above Date of Loss (DOL). As part of this investigation, HEA performed an on-site visual inspection of the Subject Property on July 15, 2015.

### II. Purpose

The purpose of this investigation was to provide an engineering opinion as to the cause and origin of reported damage to the Subject Property: determine whether there is wind or hail damage, whether any hail damage could be defined as cosmetic or functional, whether any interior damage resulted from a storm created opening or whether by some other source.

### III. Scope of this Investigation

The scope of the investigation consisted of a general on-site visual inspection to observe the existing condition of the Subject Property, photographing the conditions found, the

865 Waterman Avenue • East Providence • RI • 02914 • (401) 438-5020 • Fax (401) 434-1909

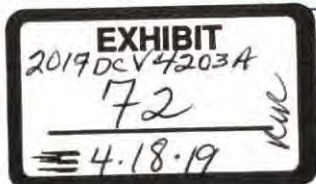
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New York • Philadelphia • Providence • Tampa

APR 18 2019

**TWIA\_Valstay\_Prod. Docs.\_ 000074**

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COURT DISTRICT COURTS NUECES COUNTY TEXAS  
BY Maria Flores DEPUTY



analysis of weather data, and the analysis of aerial and street images of the Subject Property.

#### **IV. Background Information**

1. The Subject Property included a guest inn building that was comprised of a one story, high ceilinged, public wing and five, two-story wings of guest rooms that were laid out in a square around a courtyard. The southwest corner of the square contained the one story public wing. The public wing consisted of a Lobby, Exercise Room, Laundry, Banquet Room, Dining Room, Ballroom, Bar and Restrooms as well as miscellaneous utilitarian rooms. This one story wing also contained the Kitchen facility including coolers. A Tower, marking the Lobby Entrance with an attached Vehicle Canopy, was located at the northwest corner of the public wing at the approximate middle of the west façade. Guest room wings were located at the northwest corner of the square and the north, east and south sides of the square. The fifth, smallest, wing of guest rooms extended into the courtyard from the middle of the east guest room wing and connected to the public wing, across the courtyard, with a covered walkway. The fifth wing with the covered walkway roughly bisected the courtyard.
2. The facades of the Tower, public wing, stairs and entries were finished with brick masonry, and stucco finish was used as infill between masonry clad areas on the public wing front (west) facade.
3. Vertical siding and floor-to-ceiling glass in aluminum frames made up the infill wall between the exposed and protruding ends of the CMU masonry demising walls of the guest room wings. The concrete slab edge of the second floor guest rooms was also exposed and protruding throughout the guest room wings.
4. A tiled pent roof surrounded the perimeter of the structure at the top of the exterior wall. The top of the pent roof was located at the top edge (curb) of the flat roof metal coping and was interrupted by the masonry of the Tower, entrances and building corners which were run up to above the flat roofs as parapet walls with metal coping. The pent roofs were wood framed and the exposed ends of the pent roof (where ever the pent roof did not abut an intersecting wall) were open to the weather.
5. The observed roof structure of the one story public wing was steel deck on steel framing.





2007 aerial image: HVAC equipment on curbs; entire northwest pent roof over the public wing has roof tile; no patch over Ballroom; dark patch at Banquet Room; patch at Kitchen; EPDM roofing has some patches but no thermo-plastic patches; patch near center of south-half of east wing; no patching on north-half of the east wing.

## V. Documents Reviewed

1. Aerial photographs of Subject Property (see Appendix A);
2. Weather data from the National Climatic Data Center and NOAA NWS Storm Prediction Center;
3. IBC International Building Code.
4. Marshall, T., Herzog, F., Morrison, S. and Smith, S. 2002. *Hail damage threshold sizes for common roofing materials*. 21<sup>st</sup> conference on Severe Local Storms, San Antonio, TX.

## VI. On-Site Inspection

- A. Mark Henry, RA, HEA Senior Forensic Architect, performed an on-site visual inspection of the Subject Property. The Insured was available on site during the inspection. Howard Wilbe and David Greene of Eberl Claims Service, and Ron Hambleton and Mike Robinson of Berryman Roofing were present during the inspection.

HEA 15-1016 Valstay Inn & Suites  
6255 IH-37, Corpus Christi, TX 78409

Halliwell Engineering Associates, Inc.  
Page 3 of 41



B. The following is a summary of HEA's relevant observations during the on-site inspection. HEA inspection photographs are in Appendix B.

1. The Tower was the highest roof and provided access to the Lobby roof which was approximately ten feet higher than the remainder of the public wing roof. The Tower roof was not accessible during HEA's inspection. The roofing of the Lobby and public wing was hot applied granular surface modified bitumen sheet. The condition of the roof was very poor with the asphalt bleed-out at the edges of the sheets appearing generally weathered and cracked. Additional observations included:

- (a) The roof felt spongy under foot, indicating that moisture was trapped in the substrate under the roofing.
- (b) The roofs were strewn with debris, both organic and man-made, including tree leaves and branches, containers of roofing patch material, use brushes and unused and abandoned equipment and material.
- (c) The roofs had many patches of modified bitumen sheet applied. Most roof-to-vertical-surface flashings were coated with asphaltic patching material.
- (d) Several abandoned and partly dissembled roof-top mechanical equipment units were observed on the roof. Ten abandoned curbs, without equipment, were wrapped with modified bitumen sheet.
- (e) Roof drains were typically without strainers and many appeared to have been roofed over, with the roofing cut-out to allow rain water to enter into the drain hub.
- (f) Large areas of the roof appeared to be covered with ponding water residue: dirt and decaying organic matter that is left after the ponded water evaporates.
- (g) Shallow roof vents were observed to be located in an area of ponded water residue.
- (h) An area of the roof, approximately 20' by 20' over the location of the Banquet Room below, appeared to have been covered with a patch of modified bitumen roofing strips that was peeled back, revealing that much of the underside of the patch roofing appeared to have had no adhesion with the roof beneath it but that only the edges of the strips were coated with some asphaltic material as an attachment to the roof. The roofing area below this peeled patch appeared to have been covered with a layer of asphaltic coating that was cracked or "alligatored"; as occurs to asphalt that has been exposed to weather for several years without maintenance or protective cover.
- (i) An area of the roof, approximately 20' by 20' over the location of the Kitchen below, appeared to have been covered with a patch of modified bitumen roofing strips that was peeled back, revealing that much of the underside of the patch roofing appeared to have had no adhesion with the roof beneath it but that only the edges of the strips were coated with some asphaltic material as an attachment to the roof. This patch appeared to have been laid over ponding water residue that was still visible under the area of the patch.
- (j) A large area of the roof, 'zig-zag' shaped with maximum dimensions of approximately 40' by 60' over the location of the Ballroom below, appeared

to have a patch of additional modified bitumen roofing strips laid over the roof and sealed at the edges. These strips were not peeled back but were noted to be stretched over deep, up to approximately 6", depressions in the roof substrate. All of these depressions contained residue from ponded water and some contained ponded water (*It should be noted that the depressions corresponded with areas of the metal roof deck that were broken and collapsing into the Ballroom below, as observed while inspecting the interior*).

2. There were no observed storm created openings in the roofing of the public wing; the layer of roofing to which the patches were applied was still attached to the roof substrate.
3. Some splatter marks, as from small hail-like impacts, were observed on some of the metal surfaces of roof-top equipment.
4. The roofs of the guest wings were approximately two feet above the lowest of the public wing roofs. The pent roof of the guest room wings continued around the corners and over the public wing roof and were finished with tile, except for a section on the northwest guest room wing adjacent to the lobby. This part of the over-built pent roof was finished with granular surface roofing and had several circular patches in pairs. In general, the roofs of the guest room wings were aged and strewn with debris, both organic and man-made. Observations for each of the wings were as follows:
  - (a) The northwest and north guest room wing roofs were hot applied granular surface modified bitumen sheet. The asphalt bleed-out at the sheet seams appeared generally weathered and cracked. The roof felt spongy under foot, indicating that moisture was trapped in the substrate under the roofing. Positive slope to roof drains was not maintained as there were large areas with the residue of ponded water across the wing. Roof drain strainers were missing and drain sumps were not apparent as roofing was laid over the drains and a hole cut-out to allow water to enter the drain hub. Asphaltic patching material was observed all along the roof perimeter at the flat roofing-to-pent roof coping joint. Roof vent penetrations and the roofing-to-parapet wall joint were also coated with asphaltic material. All the observed patching material was weathered and cracked.
  - (b) The east guest room wing roof was divided into two sections, north and south 'halves', by a raised expansion joint that was located approximately eight feet south of the connection with the fifth wing. The roofing over most of the north section was also hot applied granular surface modified bitumen sheet and its conditions were similar to those of the northwest and north wing roofs above, including feeling spongy under foot except that: residue from ponded water was more severe; the northeast corner parapet wall-to-roof intersection appeared to have been patched with roofing material run up the parapet; and a large patch of newer (less weathered) roofing, approximately one-quarter of this section of the wing, was laid over the northwest corner and partly covered



other smaller patches. This larger patched section was laid such that the edge of the membrane sheet overhung the metal roof edge coping; making this section appear to have been laid over-top the existing roof and sealing the coping. A tree had overgrown the roof adjacent to the west side. The remainder of the roofing on this north section of the east wing, approximately 10', appeared to be a rubber roofing membrane such as EPDM. The joint between the EPDM and bitumen roofing appeared to be lifting.

- (c) The roofing of the south half of the east wing appeared to be a rubber roofing membrane such as EPDM. This section of the roof was also covered with organic and man-made debris and ponding of water was observed, indicating that there was no positive drainage to roof drains. Generally there appeared to be defects in the installation of the rubber roofing, notably: drain sumps laid over the roofing membrane not under it, sheet seam and reinforcement edges that were unsealed and lifting, seam edges that appeared to have been sealed after lifting and bridging of the membrane. Asphaltic patching material was installed on the rubber roofing which would be an incompatible patch also numerous patches, especially strips applied at the seams of the rubber roof appeared to be made of a white thermo-plastic material that would also not be compatible with the rubber roofing as evidenced by the many lifting edges of patches observed. The end of the roof expansion curb, between the east wing and the south wing, was exposed where the roof membrane did not completely cover the coping. This area was also caulked with sealant.
  - (d) The south guest room wing was also a rubber roof the conditions of which were similar to the east wing except that there were no white (thermos-plastic) patches, many edges of sheet seams and reinforcements were unsealed and lifting and there were several patches of modified bitumen roof sheet applied to the rubber roof; an incompatible material.
  - (e) The fifth guest room wing roof was comprised of a ballasted built-up asphalt roof. This wing of the roof was likewise strewn with debris. The metal roof edge was coated with weathered cracked asphalt. A tree had overgrown the roof. A rust deteriorated galvanized metal stack, which was being used to pass metallic sheathed electrical cable through from the interior, had no weather cover.
5. The roof of the Vehicle Canopy was ballasted built-up asphalt. The roofing felt very spongy under foot. Debris was strewn over the roof. The ballast appeared to have been scrapped back from the northwest corner of the Canopy, revealing the metal roof edge coping. The metal roof edge coping seam was patched with asphalt that appeared gaped at the joint; this patching was placed over the built-up roofing. It appeared that this coping installation was part of a renovation of the Vehicle Canopy in which the tile pent roof was removed from the perimeter of the Canopy and replaced with a stucco face.
6. There were no storm created openings observed in the roofing of the guest room wings or Vehicle Canopy.

7. Inspection of the interiors at the public wing revealed that finishes were worn and dated, also:
- (a) The ceiling tiles of the suspended ceiling system throughout the public wing sagged as occurs when they are subjected to high humidity over a long period of time.
  - (b) The decorative beams of the lobby ceiling were sagging and hanging below the suspended ceiling.
  - (c) Water staining was observed on sporadic suspended ceiling tiles throughout the corridors and rooms of the public area wing.
  - (d) The Ballroom ceiling tiles showed significant water staining and numerous tiles were missing from the suspension grids, especially below locations where the metal roof deck was rusted through and broken (*these corresponded with the depressions in the roof substrate observed during the roof inspection*). Broken built-up roofing material was observed on the floor of the ballroom below these areas. The lower portion of walls in the Ballroom, below the chair-rail, appeared water damaged and moldy. The carpets and wood dance floor appeared water damaged. A wall had been constructed, and sheathed in drywall that was taped but unpainted on the Ballroom side, to separate the Ballroom from the Bar and Restrooms. The Ballroom appeared to be used for storage.
  - (e) The areas of the Banquet Room and Kitchen had similarly water stained and missing ceiling tiles. No broken metal roof deck was observed. The Banquet roof was covered in a thick layer of clothes dryer lint as the clothes dryers in the laundry were vented into this interior space. The wall between the Banquet Room and Kitchen appeared to be water damaged and moldy. These areas appeared to be used as storage and were blocked off from public access.
8. Inspection of the first floor areas of the guest wings showed that finishes were worn and dated. Water staining on suspended ceiling tiles corresponded with leaking plumbing lines in the ceiling cavity above. Some guest rooms were occupied and others' doors did not have handle hardware and were inaccessible.
9. Inspection of the second floor areas of the guest wings showed that finishes were worn and dated. Water staining on plaster ceilings occurred throughout the ceilings of all wings. Some guest rooms were occupied and others' doors did not have handle hardware and were inaccessible. Guest rooms noted as water damaged by the insured, that were able to be accessed, showed some water staining on ceilings and walls. It was noted that water stains occurred predominantly at either: the ceilings at the entry door, closet and bathroom side of guest rooms which were adjacent to the corridors at the centers of the wings, or at the exterior wall. The exterior wall locations were directly below the roof edge copings which were all coated with patching material, gapped and rusting. The corridor side of guest rooms corresponded with the low point of the roofs, toward the roof drains.



10. Interior finishes at the corners of the building, where guest room wings intersect notably below roof curb intersections, showed a great deal of cracking, patching of cracks and re-cracking of the patches. Some of the cracked intersections were covered with painted wood trim which did not appear to be original to the finishes of the corridor.
11. Several patched holes were noted in the walls of the second floor corridor of the northwest guest room wing. Additionally, a glazing panel at the stair enclosure at this area was smashed.
12. The interiors throughout the Subject Property had cobwebs in conspicuous places of corridors, guest rooms and public rooms.
13. Inspection of the exterior facades revealed:
  - (a) Vinyl advertising banners, installed at the building's southwest corner and north side of the entrance, were faded, but were intact without tears or punctures.
  - (b) The façade below the Vehicle Canopy showed water staining from water dripping down at the canopy to wall intersection.
  - (c) A location of the tiled pent roof soffit along the west façade, and one at the east end of the north pent roof, had unfinished plywood replacement panels that showed weathering from repeated wetting.
  - (d) Multiple location of the pent roof soffit appeared to be loose, with gapped seams around the perimeter.
  - (e) The north end of the west pent roof, the west end of the north pent roof, the north end of the east pent roof, the east end of the south pent roof, where they were open and exposed to weather, showed signs of sagging and deformation of the framing that was visible at the open ends.
  - (f) Tiles of the west pent roof appeared to be broken where an adjacent tree had overgrown the roof.
  - (g) Two locations of tiles were observed to be missing from the north pent roof (three tiles total).
  - (h) The exposed ends of multiple CMU guest room demising walls exhibited cracking through the masonry.
  - (i) Several locations were observed where guest room floor to ceiling glazing in aluminum frames was apparently replaced with an infill wall with a residential-type hung window and vertical siding.
  - (j) One section of guest room exterior glazing was covered with a plywood panel. The exterior entry door adjacent to this guest room was warped in the opening and did not appear to close correctly.
  - (k) Weather seal at a Lobby north facing window with loose and hanging down across the glass.

## **VII. Additional Findings**

A. A Pictometry aerial image dated 02/05/2007 showed the following notable conditions of the roof (see image in **IV. Background Information**).

1. Marking from ponded water is apparent across the roofs in the areas observed during the inspection.
2. Roof curbs appear to have HVAC equipment located on them.
3. The entire pent roof of the northwest guest room wing, that is built-over the public area wing roof, appears to be covered with roof tile.
4. There is no patching apparent over area of the Ballroom.
5. There appears to be a patch at the location of the peeled patch over the area of the Kitchen.
6. A dark patch is located in the area of the peeled roof patch, over the Banquet Room. This dark patch does not match the granular surface roofing of the peeled patch, but does match the weathered and cracked, 'alligatored', asphalt coating observed below the area of the peeled patch.
7. The EPDM roofing is in place on the south and south-half of the east wings. There appears to be modified bitumen roof patches on both of these roof areas. There is a notable large patch toward the center of the south-half of the east wing roof but there are no white (thermo-plastic) patches apparent.
8. There is no patching apparent on the north-half of the east wing.
9. There is a large reddish colored area in the east side of the ballasted fifth wing roof.
10. The trees do not appear to have overgrown the roof.
11. The tile pent roofs are a faded red color.

B. A Pictometry aerial image dated 01/18/2009 showed the following notable conditions of the roof (see image in Appendix A):

1. Marking from ponded water has increased over that observed in the 2007 image.
2. The abandoned roof-top equipment and roof curbs appear similar to those observed during the inspection.
3. There are two patch strips over the area of the Ballroom.
4. The dark patch over the Banquet Room now appears to be covered with strips of modified bitumen roofing as observed during the inspection.
5. The large patch toward the center of the south-half of the east wing roof now appears dark, as though it has been coated with asphalt.
6. There are now several patches on the north-half of the east wing roof.
7. There is no reddish colored area on the fifth wing roof.
8. The trees are encroaching on the roofs.
9. The tile pent roofs now green instead of faded red.

C. A Pictometry aerial image dated 01/03/2011 showed the following notable conditions of the roof (see image in Appendix A):

1. Marking from ponded water has increased over that observed in the 2009 image.



2. Several strips of roof patches appear on the Lobby roof similar to those observed during the inspection.
  3. Twelve patch strips appear over the area of the Ballroom similar to those observed during the inspection.
  4. A new smaller patch of modified bitumen roofing strips appears, just south of the twelve strips, over the area of the Ballroom as observed during the inspection.
  5. Additional patches appear on the south-half of the east wing roof, most notable are two light colored strips of patching that appear to be over the prior patched area.
  6. The trees are beginning to overhang the roofs.
  7. Multiple strips of what appear to be scrap-roofing are scattered about the roof.
- D. A Pictometry aerial image dated 10/15/2012 showed the following notable conditions of the roof (see image in Appendix A):
1. Marking from ponded water shows clear locations of depressed roofing over the Ballroom.
  2. A new section of patched roof appears adjacent to the Lobby roof over the area of the back of reception counter, similar to that observed during the inspection and the pent roof of the northwest guest room wing at this location now appears to be modified bitumen roofing as observed during the inspection.
  3. A piece of loose roofing appears to be laying over the curb and part of the roof that is adjacent to the twelve strips, by a remaining HVAC unit housing.
  4. A strip of the modified bitumen patch over the area of the Kitchen appears to be peeled back.
  5. White patches (thermo-plastic) appear on the south-half of the east wing roof, similar to that observed during the inspection.
  6. The northwest quadrant of the north-half of the east wing roof is now completely patched, similar to that observed during the inspection.
  7. The trees continue to overgrow the roofs.
  8. Strips of what appear to be scrap-roofing are still scattered about the roof.
  9. The Vehicle Canopy pent roof appears to have been removed.
- E. A Pictometry aerial image dated 12/24/2014 showed the following notable conditions of the roof (see image in Appendix A):
1. Marking from ponded water shows an extent of staining and debris, similar to that noted during the inspection.
  2. The patch of roofing strips over the Banquet Room appears to be peeled back, exposing the asphalt coating below, similar to that observed during the inspection.
  3. The patch of roofing strips over the Kitchen appears to be peeled back, similar to that observed during the inspection.
  4. The trees appear to have overgrown the roofs as observed during the inspection.
  5. The ballast on the Vehicle Canopy roof appears to have been scrapped back as observed during the inspection.

## VIII. Analysis

### B. Meteorological Data

#### *Wind Speed and Rainfall Data*

The closest official weather station to the subject property, with complete wind speed and direction, and rainfall data is located approximately 2 miles to the south at the Corpus Christi International Airport. On May 24<sup>th</sup>, 2015, the date of loss, the maximum wind speeds were recorded at 38 mph sustained from a southwest direction, and 51 mph gusts from a south direction. On the date of loss, this weather station recorded a maximum daily rainfall of 0.73 inches. This aerial photograph below shows the orientation of the subject property together with graphical representation of the maximum gust wind direction (red arrow) on May 24<sup>th</sup>, 2015.



Weather Data for May 24, 2015

Dates	Maximum 2-minute sustained wind speed	Direction	Maximum 5-second gust wind speed	Direction	Rainfall (inches)
05/24/2015	38 mph	Southwest	51 mph	West	0.73

Weather data source: Corpus Christi International Airport – Located approximately 2 miles south of the subject property.

#### *Hail Data*

According to the NOAA National Weather Service Storm Prediction Center there were no reports of hail in Corpus Christi or Nueces County Texas on May 24<sup>th</sup>, 2015.



### C. Damage Summary.

1. All of the areas of roofing throughout the Subject Property appeared to have wet substrates that felt spongy under foot and leaked into the interior at multiple locations.
2. The interiors of the subject property, notably ceilings and walls, appeared to be damaged by the roof leaks at multiple locations.
3. Several holes were noted in second floor corridor walls as was a broken glazing panel in this same area of the corridor.
4. Tiled pent roofs sagged at multiple locations corresponding with exposed and open ends of the pent and where soffit material exhibited weathering and loose edges.
5. Several tiles were missing from the north pent roof.
6. Several CMU demising walls were cracked at the exposed faces between guest rooms.
7. A window in a guest room of the north wing was apparently broken and covered by plywood and the frame of the adjacent exterior exit door was bent such that the door could not close properly.

### A. Pre-Existing Conditions Summary.

1. All of the roofing conditions including patches, peeled patches and depressions in roofing substrate observed during the inspection were apparent on the Pictometry image dated 12/24/2014 and pre-exist the 05/24/2015 DOL event. The missing tile along the north pent roof also appears in a 12/24/2014 aerial image of the north facing facades (see images in Appendix A).

### D. Causation Analysis

1. The roofing damage observed including: lifting patches and seams; cracked membrane and coatings; weathered materials; leaks and the subsequent damage of wet substrate and rusted, rotted and broken metal roof deck was the result of deferred maintenance of a roofing system that was beyond its in-service life coupled with what appear from the photographic record to have been inadequate repairs. The inadequacy of the repairs is evident from the patching and re-patching of the same locations over the period of several years.
2. The slight splatter markings observed on some equipment indicate small size hail impact, less than  $\frac{3}{4}$ " in diameter and are defined as cosmetic markings, not functional damage. On the date of loss, no hail in the area of the subject property was reported, however, these cosmetic markings may have occurred during another, earlier, hail storm event.
3. Interior water damage on ceilings and walls, and metal roof deck collapse damage were the result of the long term deterioration of the roofing system, due to inadequate

maintenance of the roofing and improper, or inadequate, repairs that allowed the roofing systems to leak into the interior causing water damage to interior finishes.

4. Tiled pent roofs sagged because of the long term deterioration of structural members and fasteners, as well as sheathing for racking, due to their exposure to weather by the open ends, which allowed weather to enter into the interior of the pent roof structure, and likely also due to water infiltration from the deteriorated metal roof edge copings. This water infiltration would appear to also be the cause of the soffit damage observed. This long term infiltration would also have a detrimental effect on the fasteners of roofing tiles, which may have deteriorated to the point of failing to hold the tile, which could then possibly fall off as observed at the north pent roof.
5. Tiles on the pent roof adjacent the tree along the west facade appeared to be broken by contact with the tree.
6. Based upon our general visual inspection, HEA could not determine the cause of cracking of the exposed ends of CMU demising walls between the guest rooms.
7. The observed exterior covered window (presumably broken) and broken exterior exit door appeared to be caused by vandalism as the door was pulled away from the opening, not pushed in as would have occurred if this were storm related impact damage. The covered window is suspicious by its proximity to the damaged door.
8. Interior broken glazing and holes in walls of the second floor corridor in the west guest room wing appear at a height that is accessible and able to be contacted by persons. There were no storm related openings in the building to have caused this damage and it appears to have been vandalism.

## **IX. Conclusions and Opinions**

Based on the information presented, the results of our on-site inspections and analysis of conditions observed, coupled with our knowledge of materials and construction, it is our opinion that:

- A. The observed flat and pent roof damage pre-existed the DOL event and was of a type of deterioration that is long-term due to lack of, or improper, maintenance of the roofing systems.
- B. The condition of the interior indicated that areas of the building have been abandoned from regular use for a considerable period of time and the water damage and deterioration observed pre-exist the DOL event. The infiltration of water from the roofing had been occurring over a much longer period of time.
- C. Slight hail splatter was from hail of a size that would not be large enough to cause damage to the roofing.
- D. The tiled pent roofs, like the flat roofs, exhibit damage due to deferred maintenance.
- E. The cause of cracking of CMU demising walls that also appear to be performing a bearing function would be best determined by a structural engineering survey. These could be the result of foundation shifting, thermal expansion and contraction or earthquake, and should be investigated accordingly.
- F. The interior impact damage of the hallway walls and glazing as well as the exterior exit door and nearby window impact damage appear to be isolated locations. Given



that they are oriented in a similar manner to other walls, doors and windows of similar construction, that exhibit no storm damage, it is unlikely that these isolated incident locations are the result of storm damage, but rather vandalism.

**X. Limitations:**

Our professional analysis and opinions contained within this report are based upon, and therefore limited to, the information available to us at this time and the scope of our investigation as described herein. We reserve the right to amend this report in the future, if and when previously unknown or unseen conditions are discovered or additional information becomes available to us.

Following your review of this report, please contact me with any questions, comments and/or directives you may have.

Thank you.

**Halliwell Engineering Associates, Inc.**



A handwritten signature in cursive script that reads "Todd Cormier".

Todd Cormier, P.E.  
Senior Structural Engineer

Appendices: A – Aerial Photographs  
B – HEA Inspection Photographs

## **App. 4**

# **Notice of Potential Life Safety Concern (DX 73)**

# **HALLIWELL**

## **Engineering Associates**

Texas Registration #F-10754

September 17, 2015

**Al Edwards, A.I.C.**  
Senior Claims Examiner  
Texas Windstorm Insurance Association  
PO Box 99090  
Austin, TX 78709-9090

Claim Number:	C0202851
<b>DOCUMENT TYPE:</b>	<b>NOTICE of POTENTIAL LIFE SAFETY CONCERNS</b>
Date of Loss:	05/24/2015
Insurance Company:	Texas Windstorm Insurance Association
Policy Number:	55267608
Insured:	Valstay Inn & Suites
Location of Loss:	6255 IH-37, Corpus Christi, TX 78409
Field Adjuster:	Howard Wilbe, Eberl Claims Service

Dear Mr. Edwards;

### **I. Introduction**

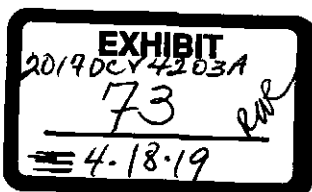
As a result of filing a claim for damage to the property, referenced above, Texas Windstorm Insurance Association (TWIA) retained Halliwell Engineering Associates, Inc. (HEA) to perform an investigation of the reported damage at the above Location of Loss (LOL) or, the property. As part of this investigation, HEA performed an on-site visual inspection of your property on July 15, 2015. This letter is to provide NOTICE of POTENTIAL LIFE SAFETY CONCERNS with regard to the some of the conditions observed at the property by HEA during our on-site inspection.

### **II. Observations during On-Site Inspection**

- A. The general condition of the property, observed during the inspection on site, indicates that regular maintenance of the property and roofing systems in particular have been deferred for an extended period of time and that the roofing systems have deteriorated.
- B. The deteriorated condition of the roofing systems has allowed storm water to infiltrate through those systems and enter into the structural elements and finishes of the interior. Over time, this infiltration had caused significant damage to interior finishes and important structural elements which was observed during HEA's inspection. Significant damage includes:

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Chicago • Cleveland • Dallas • Houston • Los Angeles • Miami  
New York • Orlando • Philadelphia • Providence • Tampa



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MARIA FLORES

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- C. Corrosion of the structural metal roof deck, to the point where holes have rusted completely through the thickness of the metal deck, such that the deck is no-longer capable of supporting the loads that were imposed upon it and the deck had broken and bent (or collapsed) inward (downward into the interior of the structure). This had allowed some of the roofing system material, which had been supported by the deck, to fall through into the interior, where it was observed on the floor of the Ballroom.
- D. Weathering of tiled pent-roof wood framing members and framing fasteners to the point where the pent roofs were observed to be sagging and some of the tiles appeared to be loose. Fragments of tile were observed on the surface of the parking lot in the vicinity of guest's parked vehicles.
- E. Sagging of decorative faux-wood beams of the lobby ceiling which appeared to be separating from their attachment to the lobby ceiling, immediately above the public walking and seating areas of the lobby.
- F. Exposure of interior ceilings and wall finishes to water infiltration such that they were crumbling, peeling, sagging and becoming detached from their supporting structures.
- G. Exposure of interior finishes to water infiltration such that they appeared to be contaminated with mold.
- H. Clothes dryers of the Inn's laundry facility did not have their exhaust ducted to the exterior, but rather vented dryer exhaust into the abandoned Banquet Room area.
- I. Damage to exterior exit door.

### **III. NOTICE of LIFE SAFETY CONCERNS**

- A. The deteriorated condition of the structural metal deck and its failure to support the loads imposed on it represents a potential risk of fall and or injury to anyone walking on or below the roof in those areas, and the risk that other locations of failed roof deck may yet be undetected.
- B. The deteriorated condition of the tiled pent-roofs around the perimeter of the exterior walls represent a risk of injury to persons or damage to property by the potential for collapse of the pent-roof or the fall of loose tiles from the pent-roof.
- C. The deteriorated condition of the faux-wood beams in the lobby represents a risk of injury to persons or damage to property by the potential for the fall of loose beams from the ceiling.
- D. The apparent growth of mold in the interior of the facility represents a potential health risk to persons.
- E. The venting of the clothes dryers into the interior of the building represents both a potential health risk and serious fire risk due to the lint produced by clothes drying being distributed throughout the interior of the building.
- F. Damaged components of a means of egress represent a potential life safety risk in case of emergency and the need for use of the means of egress.

### **IV. Conclusions and Opinions**

- A. Based on the conditions observed at our on-site inspection, coupled with our knowledge of materials and construction, it is our opinion that the observed conditions listed above are serious risks to life safety and should be addressed as soon as possible.

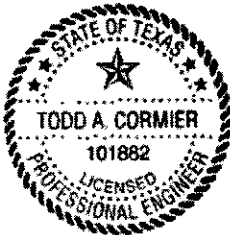
- B. Additionally, based upon the overall condition of the property, there may be other areas or items of concern which also represent the potential for life safety risks, which were not able to be observed by HEA during our visual inspection because of the limited scope of our investigation.
- C. The entire facility should be thoroughly inspected by the City of Corpus Christi Code Enforcement Division and evaluated by a design professional who is experienced in structural design and life safety systems. Determination should be made as to the full extent of needed repairs to your facility. Attention should be paid to the entirety of the structural support systems throughout your property, especially those parts of the structure that support the damaged metal roof deck. Repairs should then be made expediently in order to assure the continued safety of your guests.

**V. Limitations:**

Our professional analysis and opinions contained within this report are based upon, and therefore limited to, the information available to us at this time and the scope of our investigation as described herein. We reserve the right to amend this report in the future, if and when previously unknown or unseen conditions are discovered or additional information becomes available to us.

Thank you,

**Halliwell Engineering Associates, Inc.**



A handwritten signature in cursive script that reads "Todd Cormier".

Todd Cormier, P.E.  
Senior Structural Engineer

CC: Valstay Inn & Suites

**TWIA\_Valstay\_Prod. Docs.\_ 000065**

### Automated Certificate of eService

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lredetzke@hicks-thomas.com  
Envelope ID: 45679071  
Status as of 8/25/2020 1:13 PM CST

Associated Case Party: Valstay, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Todd Lipscomb		todd@lhllawfirm.com	8/25/2020 12:59:56 PM	SENT
Daniel Dominguez		daniel@lhllawfirm.com	8/25/2020 12:59:56 PM	SENT

Associated Case Party: Texas Windstorm Insurance Association

Name	BarNumber	Email	TimestampSubmitted	Status
Jay Old		tmadden@hicks-thomas.com	8/25/2020 12:59:56 PM	SENT
Jay Old		jbaker@hicks-thomas.com	8/25/2020 12:59:56 PM	SENT
Jay Old		sdodson@hicks-thomas.com	8/25/2020 12:59:56 PM	SENT
Jay Old		gdenson@hicks-thomas.com	8/25/2020 12:59:56 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stephen Barrick		sbarrick@hicks-thomas.com	8/25/2020 12:59:56 PM	SENT
Jay Old		jold@hicks-thomas.com	8/25/2020 12:59:56 PM	SENT
Cassie Pruski		cassie@lhllawfirm.com	8/25/2020 12:59:56 PM	SENT
David Salyer		dpsalyer@mapalaw.com	8/25/2020 12:59:56 PM	SENT